Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

AUGUSTUS J. SIMMONS,

Petitioner,

vs.

HORACE B. WETHERALL, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS
Petitioner
P.O. Box #1
Windsor, CT 06095
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31pp

QUESTIONS PRESENTED

1. The first question presented upon this contention of plaintiff is as to whether or not the proceedings herein referred to have been commenced and conducted in conformity with the requirements of state statutes and federal regulations so as to have given the trial court jurisdiction to render a decree.

2. Plaintiff prays this court grant Certiorari because of the great public interest and the important constitutional question involved, specifically whether the decree of the highest court of the state under *Simmons v. Wetherall*, #163875 violates the supremacy clause of the Constitution, Art. VI, CL. 2, Amend. 14, allegedly "frustrating" enforcement of the Uniform Real Property Acquisition Act, PL. 91-646 and lawful regulations issued thereunder. 84 Stat. 1894, 42 USC §§ 4601-4655.

3. The standard of review under equal protection rationality analyses is governed by federal constitutional law and "a state court's decision invalidating state legislation may be reversed by this court if the state court misinterpreted the relevant federal constitutional standard." *Minnesota v. Clover Leaf Co.*, 101 S.Ct. at p. 719, n.6.

4. Questions arising in state court relating to scope or construction of applicable federal statutes and regulations thereunder are federal questions which may be appropriately reviewed by the Supreme Court on Certiorari.

5. Where the record UTTERLY fails to show that minimum standards of procedural due process was not

QUESTIONS PRESENTED – Continued

observed in the rendition of a decree by the Supreme Court of Connecticut without any evidence or hearing whatever in the court of first instance; without subject matter jurisdiction or jurisdiction of the parties, and, without any pleadings, process, hearings or judgments.by the court below; without any determination, valuation, or payment of just compensation; where fraud, duress, coercion, collusion, conspiracy by and between the state and federal agency (F.A.A.) was the accepted norm, a review of such gross constitutional violations is pleaded for reversal.

6. Whether the lessor, Connecticut Department of Transportation and the lessee, Federal Aviation Administration – "acted in concert in doing the illegal act" – is of prime consideration to the courts where a lessor who leased lands it did not own was a T-R-E-S-P-A-S-S-E-R. *Simons v. United States*, 413 F.2d at P. 535, 536; *United States v. Wyoming*, 331 U.S. 440, 67 S.Ct. 1319, 91 L.Ed. 1590 (Exh. L, in the Lodging submitted herewith).

7. Where the ARBITRARY exercise of power is in clear conflict with those fundamental "principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights," *Pennoyer v. Neff*, 95 U.S. 714, 733; *Booth v. Illinois*, 184 U.S. 425, 429; *Truax v. Corrigan*, 257 U.S. 312, 319, the decision of the highest court of the state was against the *TITLE, RIGHT, PRIVILEGE, FRAUD, IMMUNITY* so set up or claimed and where the court, in concert with discharged private counsel transmogrified plaintiff/owners legislative tort mandate into an exercise of eminent domain, and

QUESTIONS PRESENTED – Continued

where from the record by clear and necessary intendment, the FEDERAL QUESTION was directly involved so that the state Supreme Court could not have given judgment without deciding the question.

PARTIES TO PROCEEDING

Petitioner:

Augustus J. Simmons, Plaintiff/Owner

Respondents:

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JURISDICTION

The jurisdictional basis for this appeal is 28 U.S.C. § 1257 which had its origin in the act of September 24, 1789, 1 Stat. 73, 85, by that section, as construed in *Martin v. Hunter's Lessee*, 1 Wheat. 304, 4 L.Ed. 97 (1816), strongly reinforced by *Cohens v. Commonwealth of Virginia*, 6 Wheat. 264, 5 L.Ed. 257 (1821), the denial of a claim of a federal right in the final judgment of the highest available court of a state could be brought for review at the bar of this court.

OPINION BELOW

Plaintiffs motion and briefs to the Chief Clerk of the Supreme/Appellate Court, dated November 4, 1999 to REMAND – REFER – TRANSFER – ASSIGN to the lower court (Superior), to appoint three (3) referees pursuant to the Practice Book for determination of just compensation which court has continuing jurisdiction over Docket #163875 that possesses vested and accrued real property rights for a "taking" of plaintiffs Parcel "C" for "airport" purposes, not later than November 12, 1964 by governmental action of the federal agency (F.A.A.) acting in concert with the state agency, Connecticut Department of Transportation, under FEDERAL GRANT AGREEMENT #9-06-009-5708 (1955) for which "TAKING" no fair or just compensation was ever paid as mandated by the Fifth and Fourteenth Amendments of the Constitution; by the procedural mandates of the Federal Grant Agreement; by public law 91-646 (42 U.S.C. §§ 4601-4655); by Special Act #170 (1969). Ex. "I"

ORDER

The ORDER, dated November 30, 1999 from the Chief Clerk, Supreme/Appellate Courts reads:

The motion of the plaintiff, filed November 4, 1999, to remand to Superior Court to appoint referees to determine just compensation for taking, having been presented to the court, is hereby ordered DISMISSED. Ex. "II"

ORDER [INVALIDATED]

The motion for approval of stipulation for and order of reference, waiving a jury trial and referring to a state referee, in accordance with CGS § 52-434 and 52-434a, all further proceedings therewith as if the subject matter had been originally brought before such state referee rather than as a jury trial which has now been waived by all parties.

The ORDER, dated June 2, 1976 by Hon. Dannehy, J. reads:

ORDER

Hon. Louis Shapiro, State Referee, is hereby appointed to hear all further proceedings and render judgment on the above entitled matter.

(6-2-76 Dannehy, J.) By the court,

_____

Peter H. Gooden
Assistant Clerk

Ex. "III"

STATUTE AND CONSTITUTIONAL PROVISIONS

The Constitution of Connecticut provides that – "no person shall be deprived of life, liberty or property, without due process of law." Art. I § 11.

Amendment XIV, Constitution of the United States

" . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment V, Constitution of the United States

" . . . nor shall private property be taken for public use without just compensation."

42 U.S.C. § 4655 (P.L. 91-646-January 2, 1971)

Requirements for uniform land acquisition policies; payments or expenses incidental to transfer of real property to state; payment of litigation expenses in certain cases.

Notwithstanding any other law, the head of a federal agency shall not approve any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such agency that –

(1) In acquiring real property it will be guided, to the greatest extent practicable under state law, by the land acquisition policies in Section 301 and the provisions of Section 302, and

(2) Property owners will be paid or reimbursed for necessary expenses as specified in Sections 303 and 304.

Amendment of Section 4655

Public law 100-17, Title IV §§ 417, 418, April 2, 1987, 101 Stat. 256, provided that, to take effect on the effective date provided in regulations promulgated under Section 4633 of this title (as amended by Section 412 of Pub. L. 100-17), but not later than two years after April 2, 1987, this section is amended by designating existing provisions as Subsec. (a), in Subsec. (a) as so designated striking out "a state agency" the first place it appears and inserting in lieu thereof "an acquiring agency" and striking out "state agency" the second place it appears and inserting in lieu thereof "acquiring agency," and by adding at the end thereof the following new Subsec. (b):

"(b) For purposes of this section, the 'acquiring agency' means –

"(1) a state agency (as defined in Section 4601(3) of this title, which has the authority to acquire property by eminent domain under state law," and

"(2) a state agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation."

STATEMENT OF THE CASE

This case is an AIRPORT-related case that transcends back to a 1955 Federal-Aid Grant Agreement between federal and state agencies wherein the state agency (Connecticut Dept. of Transportation) was obligated under the grant agreement to acquire "satisfactory property interests" as defined in 14 C.F.R. § 152.3 for what would

ultimately become a navigational servitude imposed upon the owner by the federal agency (F.A.A.) with the invasion, appropriation, installation on the surface of the real property, sophisticated navigational instrumentation controlling ingress and egress of air traffic at Bradley Airport, Connecticut's premier airport in the summer of 1962.

Starting on February 28, 1962 with a tortious course of conduct, the state agency initiated the first condemnation that was negated by the courts as arbitrary, unconstitutional with procedural problems (153 Conn. 351 (1966)) and was remanded.

In January, 1968 the state instituted condemnation proceedings a second time under Conn. General Statute § 48-12, in lieu of C.G.S. § 15-79 and again the court ruled the proceeding "null and void". (160 Conn. 492 (1971))

During the 1969 session of the Connecticut Legislature a special act was passed by the general assembly allowing Augustus Simmons to sue the state for DAMAGES over "loss of use of land" arising out of the bumbling condemnation proceedings. On January 5, 1970 Plaintiff/Owner Simmons brought such a suit *Simmons v. Wetherall,* Docket #163875 which had several hearing dates scheduled that were all aborted. To date, damages have not been addressed and the action is still pending.

During the summer of 1974 the federal agency, F.A.A., without having paid any compensation, intended to upgrade the navigational servitude with the addition of a "middle marker" on private property and in lieu of negotiating a lease with the owner, enters into a lease with the sponsor of the airport, notwithstanding they had

full knowledge that title reverted back to the owner on the land records on March 24, 1972 after the second condemnation was ruled null and void.

In December, 1977, plaintiff retained the firm of Rogin-Hirtle, Esq.'s to represent him upon scheduled days for hearings in damages before referee Shapiro and the very first act of private counsel was an attempt to give the state (and the F.A.A.) "complete insulation from and absolution from all of its sins" by invalidating the hearings in damages and for which a dismissal, discharge, in writing, was hand delivered on December 23, 1977. The discharge of 12/23/1977 was not sufficient to curb the tortious course of conduct.

Where the matter of subject matter jurisdiction and of indispensable parties was ARGUED before the court of competent jurisdiction, Hon. Dupont, A., on June 7, 1982 and the STATE vigorously and vehemently challenged the superior court with lack of subject matter jurisdiction and the court, so recognizing, denied compensation from the slush fund to indispensable parties (VALENTE-ALLAIRE), yet, did not, would not set aside the void decree due to a supreme court ruling under *Simmons v. Wetherall*, 180 Conn. 587 (1980).

Where the "Slush Fund" monies were allowed to remain before the court from 1978 to 1991 before returning said monies to the state treasury, signifies FEDERAL QUESTION VIOLATIONS of the most severe nature, extending indefinitely the original unlawful, unconstitutional entry by the F.A.A. and the State of Connecticut.

REASONS FOR GRANTING THE WRIT

1. It is plain that the practical effect of the judgment of the Connecticut Supreme Court is to deprive the plaintiff of property without affording it at any time an opportunity to be heard in its defense. The plaintiff asserted an invasion of its substantive right under the federal Constitution to equality of treatment. If the allegations of the complaint could be established, the federal Constitution conferred upon the plaintiff the right to be heard at a meaningful time, and in a meaningful manner to meet currently accepted standards of procedural due process in the area of property rights. *Kukanskis v. Griffith*, 180 Conn. 501 (1980); see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed. 2d 556 (1972), rehearing denied, 409 U.S. 902, 93 S.Ct. 177, 342 L.Ed. 2d 165 (1972); *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 92 S.Ct. 1611, 31 L.Ed. 2d 424 (1972); *Sniadich v. Family Fin. Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed. 2d 349 (1969); *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed. 2d 406 (1974); *North Georgia Finishing Inc. v. Di-Chem Inc.*, 419 U.S. 601, 95 S.Ct. 719, 42 L.Ed. 2d 751 (1975).

2. Where the highest court of the state acted in an unconstitutional manner, no other judicial remedy is open to the plaintiff. After the decision by the highest court (180 Conn. 587 (1980)), it has been entirely futile for the plaintiff to apply for a judicial remedy to the lower court that acknowledged it was without subject matter jurisdiction on June 7, 1982; Hon. Dupont, A. presiding upon challenge by the Atty. General's office that the court was powerless to make any payments to lien-holders for reasons plaintiff/owner refused to tender any deeds. See Ex. "P"

3. If the judgment of the state Supreme Court is permitted to stand, deprivation of plaintiffs property is accomplished without its ever having had an opportunity to defend against the unconstitutional course of conduct, and, without payment of any just compensation. Superior Court refused to hear or act on plaintiffs complaint and denied relief; not because of lack of power or because of any demerit in the complaint, or previous decisions, but because – "the Supreme Court has acted and the lower court will not act to override the Supreme Court."

4. If the result of the state Supreme Court is not set aside, the transgression of the due process clause of the Fourteenth Amendment would be obvious. *Ettor v. Tacoma*, 228 U.S. 148 (1913). See also *Brinkerhoff-Faris Co. v. Hill*, 281 U.S. 273 (1930). The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive, or administrative branch of government. Where plaintiff's claim is one arising under the federal Constitution and, one on which the opinion of the highest state court has not decided finality, the question whether plaintiff has been accorded due process in the primary sense, – whether it has had an opportunity to present its case and be heard in its support is the question before the court. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was afforded to him some real opportunity to protect it. *Postal Telegraph Cable Co. v. Newport*, 247 U.S. 464, 475-6 (1918).

5. The pertinent words of the Fifth Amendment of the Constitution of United States are the familiar ones:

"nor shall private property be taken for public use, without just compensation." That prohibition, of course applies against the states through the Fourteenth Amendment. *Chicago B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 239 (1897); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 122 (1978). The installation of navigational instrumentation by the federal agency (F.A.A.) under Federal Grant Agreement #9-06-009-5708 (1955), no later than November 12, 1964 amounted to a "TAKING" – it was obviously uncompensated – within the amendment's proscription.

6. The appropriation of the beneficial use of plaintiffs property by the state and federal agencies is analogous to the appropriation of the use of private property in *United States v. Causby*, 328 U.S. 256 (1946). "Causby" emphasized that government had not 'merely destroyed property [but was] using a part of it for the flight of its planes.' " *Penn Central*, 438 U.S. at 128 quoting from *Causby*, 328 U.S. at 262-263, n. 7.

To put it another way: A state, *by ipse dixit*, may not transform private property into public property without compensation, even for the limited duration of the deposit in court. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980). This is the very kind of thing that the taking clause of the Fifth Amendment was meant to prevent. That clause stands as a shield against the arbitrary use of governmental power.

7. Where the twice discharged and withdrawn private counsel took the action with the malicious intention to cause a deprivation of constitutional rights, or other injury to plaintiff, acted "with such disregard of the

[plaintiffs] clearly established constitutional rights that their action cannot reasonably be characterized as being in good faith." *Wood v. Strickland*, 420 U.S. 322 (1974). Where the constitutional right allegedly infringed by them was clearly established at the time of their challenged conduct, where they knew or should have known of that right, their conduct violated the constitutional norm, and, the state Supreme Court, putting a stamp of approval on such malicious intention to cause a deprivation of constitutional rights denied a right, a privilege claimed under the Constitution of the United States.

8. Where the right to compensation was a vested property right and the right of the plaintiff in error was fixed by the law in force when the property was damaged for public purposes, in addition to the special legislation (Special Act #170 (1969), *Simmons v. Wetherall* (1970)), and the right so vested cannot be defeated or destroyed by subsequent intervention of private counsel INVALIDATING the special legislation, giving retrospective effect to a decree by dating it back to November 12, 1964 was constitutional FRAUD and the Connecticut Supreme Court expressing its policy on just compensation in *E. & F. Construction v. Ives*, 156 Conn. at page 420 (1968) wherein they quote the United States Supreme Court, and cite its rulings where property is taken before payment is made, the sanctioning of the INVALIDATION was unconstitutional conduct against the Fifth & Fourteenth Amendments warranting the reversal of the state Supreme Court decree.

9. Pursuant to the dissolution of attachments by the owner on the land records by C.G.S. § 52-327, the real estate shall be free from any lien or encumbrances where

the attachments, without statutory authority, have never been prosecuted to effect. (PL. Ex "A"). Where the Constitution and statutes of this state do, in most express and emphatic terms, prescribe conditions that precede such appropriation and must be complied with before the taking can be complete, the case ought to be sent back to the Superior Court for disposition for two (2) reasons, namely: All the interested and necessary parties are not before the court, and secondly, CANNOT, in this proceeding be brought before the court. *Marshall v. Clark*, 170 Conn. 195 at 205 (1976).

10. The court can always control its own process; and will never permit void writs to be issued and executed, when brought to its attention, and it can make no difference whether the effort to resist the issuance and execution of such process is made within one, or after a lapse of ten years, from, the date of the void judgment. *Harris v. Hardeman*, 55 U.S. 334 (1852).

11. A void judgment rendered without service of process and therefore without jurisdiction, may be set aside at any time for "IRREGULARITY." *Pettis v. Johnson*, 78 Okla. 277, 190 Pac 681; *Hockaday v. Jones*, 8 Okla. 156, 56 Pac 1054 (1899); *Chehalis Coal v. Laisure*, 97 Wash. 422, 166 Pac 1158 (1917).

12. A court of limited or inferior jurisdiction cannot by its own finding confer on itself a jurisdiction whereupon the real facts there is none.

ARGUMENT

The constitutional validity of a decree by the state Supreme Court acting under a special legislative enactment (Special Act. #170 (1969), *Simmons v. Wetherall*, #163875 (1970)) does not authorize such unconstitutional conduct as was entered in this cause on the land records but not with the trial court or court of first instance by twice discharged private counsel who had officially withdrawn from representation of the owner on April 19, 1978, prior to entering "supplemental judgments" *ex parte* on June 2nd and 5th on the land records; prior to service of process or publication of notice – that was never made. See *Pennoyer v. Neff*, 95 U.S. 714 (1877), also *Brandriff v. Sellas*, 40 Conn. Sup. 243 (1985), *Marshall v. Clark*, 170 Conn. 199 at 205 (1976), denying all rights to plaintiff upon a seizure of federal grant agreement real property, occupied and used by governmental agency action, F.A.A., who were never mentioned or made a party to any proceedings for airport navigational installations, without condemnation or exercise in eminent domain or payment of just compensation; where plaintiff alleged that the omission of the name, title, and interest, of said plaintiff by said private counsel (Rogin-Hirtle, Esq.'s), or, to serve upon said plaintiff any personal notice of the fact of the filing of the said "supplemental judgment" or of the hearing thereon were and each of them was willful, intentional fraud and done for the purpose of defrauding said plaintiff and depriving it of its said interest in said premises without the basic, fundamental due process of law; whose arbitrary, oppressive, unjust, unconstitutional and fraudulent conduct was terminated with two (2) discharges and a withdrawal from representation on April

19, 1978, prior to "freezing" governmentally occupied real property on June 2nd and 5th without subject matter jurisdiction or jurisdiction of the parties, and, no returns of service to the Superior Court that would give the trial court jurisdiction and where the statute (Special Act # 170) makes provision for damages that was invalidated, destroyed was an infringement of plaintiff's constitutional rights for just compensation.

Where the Supreme Court dismissed the most recent MOTION TO REMAND, dated November 4, 1999 for assessment of damages, and, where a "TAKING" for public use without compensation can be corrected by payment, while a governmental action that violates due process requirements may be invalidated, without regard to whether compensation is provided and where the highest court of a state transmogrified plaintiff's tort action into an eminent domain action that is repugnant to the Constitution, treaties, laws of the United States, the validity of such exercise is the question for review.

P.L. 91-646 UNIFORM REAL PROPERTY ACQUISITION ACT

In *McCulloch v. Maryland*, 4 Wheat, 316, 436, decided in 1819, this court declared the states devoid of power – "to retard, impede, burden, or in any manner control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government."

In *Davis v. Elmira Savings Bank*, 161 U.S. 275, 16 S.Ct. 502, 40 L.Ed. 700 decided in 1896, this court declared that

a state law cannot stand that "either frustrates the purpose of the national legislation or impairs the efficiency of those agencies of the federal government to discharge the duties, for the performance of which they were created" 161 U.S. at 283, 16 S.Ct. at 503. And again in *Hill v. State of Florida ex Rel. Watson*, 325 U.S. 538, 542-543, 65 S.Ct. 1373, 1375, 89 L.Ed. 1782, decided in 1945, this court struck down a labor regulation saying it stood " 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress * * * .' " 325 U.S. at 542, 65 S.Ct. at 1375.

Congress had made it clear that all real property owners involved in activity within the scope of the act to be completely free from coercion against subversive tactics. 42 U.S.C. § 4601, sec. 7.

Questions arising in state court relating to scope or construction of applicable federal statutes and regulations thereunder are federal questions which may be appropriately reviewed by the Supreme Court on Certiorari, *Jacobson v. New York, N.H. & H.R. Co.*, 206 F.2d 153 at page 157 (2d Cir. 1953); *Moore v. Chesapeake & Ohio Ry. Co.*, 291 U.S. 205, 54 S.Ct. 402, 78 L.Ed. 755 (1934). See Harvard L. Rev. 1499 (1953).

SIMMONS V. WETHERALL #163875

The constitutional validity of a decree of the Supreme Court of Connecticut acting under a special legislative enactment (Special Act #170 (1969), *Simmons v. Wetherall*, #163875 (1970)) that does not authorize such a "judgment" as was entered in this cause or to make its entry

the event upon which title is changed. The statute (act) contains no provision or authority for any such dual process, and the record utterly fails to show that any such was issued, or that the defendant appeared at all in said suit at any time.

Where the judgment was entered *ex parte* on the land records but not with the trial court or court of first instance by twice discharged private counsel, who had officially withdrawn from representation of the owner on April 19, 1978 (Ex. "C" & "D"), prior to putting encumbrances on the land records; prior to service of process or publication of notice (see *Pennoyer v. Neff*, 95 U.S. 714 (1877)), which service or notice was never made, denying all rights to plaintiff.

Respectfully submitted,

Augustus J. Simmons, Petitioner
P.O. Box # 1
Windsor, CT 06095
(860) 569-6714

EXHIBIT I

This Item Is The Lodging Submitted Herewith

EXHIBIT II

STATE OF CONNECTICUT

SUPREME COURT

NO. CV70-0163875

AUGUSTUS J. SIMMONS

v.

HORACE B. WETHERALL ET AL. :NOVEMBER 30, 1999

ORDER

THE MOTION OF THE PLAINTIFF, FILED NOVEMBER 4, 1999, TO REMAND TO SUPERIOR COURT TO APPOINT REFEREES TO DETERMINE JUST COMPENSATION FOR TAKING, HAVING BEEN PRESENTED TO THE COURT, IS HEREBY ORDERED **DISMISSED.**

BY THE COURT,

/s/ Francis Drumm
CHIEF CLERK

NOTICE SENT: DECEMBER 1, 1999
AUGUSTUS J. SIMMONS, PRO SE
OTTO P. WITT
ROGIN, NASSUA, CAPLAN, LASSMAN & HIRTLE
CLERK, HARTFORD J.D.
HON. JOHN J. LANGENBACH

165/991168

EXHIBIT III

NO. 16 38 75

AUGUSTUS J. SIMMONS	:	SUPERIOR COURT
VS.	:	HARTFORD COUNTY
	:	JUNE 15, 1976
HORACE B. WETHERALL, ET AL	:	

MOTION FOR APPROVAL OF STIPULATION FOR AND ORDER OF REFERENCE

(Filed June 16, 1976)

The Defendants in the above entitled cause hereby move that the Court approve the Stipulation of the parties for referral of this case to a State Referee for all further proceedings and judgment in accordance with G.S. Sections 52-434 and 52-434a, together with the power to proceed therewith as if the subject matter had been originally brought before such State Referee rather than as a jury trial which has now been waived by all parties.

DEFENDANTS,

By: CARL R. AJELLO
ATTORNEY GENERAL

/s/ Victor Feingold
Victor Feingold
85320
Assistant Attorney General
Transportation Department
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Hartford, Conn. 06114

Certified in accordance with
Practice Book, Section 80, and
foregoing document was made by
mailing to:

David B. Salzman, Esq.
36 Cannon Street
Hamden, Connecticut 06518

/s/ Victor Feingold
Victor Feingold
Assistant Attorney General

6-2-76

The case of Augustus J. Simmons v Horace B. Wetherall, #163875 is ordered referred to Shapiro, J

(By the Court) Dannehy, J

Judge Shapiro notified

NO. 16 38 75

AUGUSTUS J. SIMMONS	:	SUPERIOR COURT
	:	HARTFORD COUNTY
VS.	:	JUNE 10, 1976
HORACE B.	:	
WETHERALL, ET AL	:	

STIPULATION FOR AND ORDER OF REFERENCE

STIPULATION

(Filed June 16, 1976)

The parties to the above entitled cause hereby stipulate and agree:

1. that a jury trial is waived; and

2. that it may be referred to a State Referee for all further proceedings and judgment.

PLAINTIFF

By: /s/ David B. Salzman
His Attorney

DEFENDANTS,

By: CARL R. AJELLO
ATTORNEY GENERAL

/s/ Victor Feingold
Victor Feingold
Assistant Attorney General

ORDER

Hon. Louis Shapiro, State Referee, is hereby appointed to hear all further proceedings and render judgment on the above-entitled matter.

(6-2-76)
(Dannehy, J.)

BY THE COURT

/s/ Peter H. Gooden
Ass't Clerk

Supreme Court, U.S.
FILED
MAR - 7 2000
CLERK

(2)

No. 99-1318

In The

Supreme Court Of The United States

October Term, 1999

AUGUSTUS J. SIMMONS

Petitioner

v.

HORACE B. WETHERALL, ET AL.

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

BRIEF IN OPPOSITION FOR RESPONDENTS COMMISSIONER, CONNECTICUT DEPARTMENT OF TRANSPORTATION AND ATTORNEY GENERAL OF CONNECTICUT (WITH ATTACHED APPENDIX)

RICHARD BLUMENTAL
ATTORNEY GENERAL
OF CONNECTICUT

* PAUL K. PERNEREWSKI
Assistant Attorney General
Office of the Attorney General
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
(860) 808-5090

**Counsel of Record*

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1999

AUGUSTUS J. SIMMONS
Petitioner
v.

HORACE B. WETHERALL, ET AL.
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

BRIEF IN OPPOSITION FOR RESPONDENTS COMMISSIONER, CONNECTICUT DEPARTMENT OF TRANSPORTATION AND ATTORNEY GENERAL OF CONNECTICUT (WITH ATTACHED APPENDIX)

STATEMENT OF THE CASE

This is yet another in a long series of actions between the parties and others going back to the year 1963. All these legal actions concerned title to the same three parcels of land situated in the Town of East Granby at the end of Runway 6/24 at the State-owned Bradley International Airport. On January 4, 1978, a final judgment by stipulation of five reopened and consolidated superior Court cases seemed to finally end the previous years of litigation (*Simmons v. Wetherall*, Judgment, Superior Court Docket No. CV 70-163875) (App. A-1).

The Petitioner, represented by counsel and appearing *pro se*, agreed to convey the subject parcels to the State for $385,600. The petitioner subsequently refused to accept the agreed upon compensation, and the State secured a Supplemental Judgment (June 2, 1978) which reaffirmed the January 4, 1978 judgment and vested titled to the three parcels in the State and ordered the State to deposit with the Clerk of the Superior Court $385,600 on the Plaintiff's behalf (App. A-6). In 1980, the Connecticut Supreme Court recognized the validity of this stipulated final judgment in *Simmons v. Wetherall*, 180 Conn. 587, 430 A.2d 1296 (1980).

Not content to accept the 1980 final decision of this Supreme Court, the petitoner by counsel and/or *pro se*, has initiated a series of twenty state or federal court actions since 1981, all against the State and at times including other defendants.

All of these cases sought in some form or fashion to reverse and overturn the 1978 judgments which were sustained in 1980 by the Connecticut Supreme Court. The chart of litigation prepared by counsel for the Respondents as an aid to the Court (App. A-17) highlights the course of

litigation pursued by the petitioner since the Connecticut Supreme Court's 1980 decision in *Simmons v. Wetherall*, supra.

On April 3, 1992, the Connecticut Appellate Court entered an ORDER enjoining the petioner from filing appeals or other pleadings in the Appellate Court relating to *Simmons v. Wetherall*, 180 Conn. 587, (*Simmons v. Wetherall*, No. PSC-91-0549, App. A-22).

The matter presently before the Court arose when the petitioner filed, on November 4, 1999, in the Connecticut Supereme Court a "Motion in the Supreme Court to Remand to the Superior Court to Appoint Referees to Determine Just Compensation for Taking." (Petition, Exhibit I). On November 30, 1999, the Connecticut Supreme Court entered an order dismissing the petitioner's November 4, 1999 Motion. (Petition, App. 1). It is that order of the Connecticut Supreme Court which is the subject of the instant Petition for Writ of Certiorari.

REASONS FOR DENIAL OF THE PETITION

The Respondents respectfully submit that there are no special or important reasons to support the petition. This is not a case in which the Connecticut Supreme Court has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals. Nor is it a case which the Connectiuct Supreme Court has decided an important question of federal law that should be decided by this Court or in a way that conflicts with relevant decision of this Court. (See Rule 10, Supreme Court Rules).

ARGUMENT

In April, 1992, the Connecticut Appellate Court, exercising its authority pursuant to the Connecticut Practice Book Sec. 4184, imposed fair, appropriate and reasonable sanctions against the petitioner. These sanctions enjoined the petitioner from the further initiation of frivolous and wasteful appeals or other proceedings in the Appellate Court (*Simmons v. Wetherall*, No. A.C. 10918 Order April 3, 1992; Pet. Cert. Denied Supreme Court, No. PSC-91-0549, May 21, 1992)[1/]

[1/] The Petitioner is under a similar prohibition in Federal Court. (Simmons v. Frankel, et al., No. 92-6208, Feb. 23, 1993)(App. A-24). The Court Order stated: in part:

> Not dissuaded by the final judgment granting title of the disputed real property to the State of Connecticut, Simmons continued to pursue the issue. Simmons filed seven state and five federal proceedings after the 1978 stipulation was certified. Then in a 1988 order, Judge Cabranes enjoined Simmons from filing "any state or federal claims in any federal court against any of the defendants named in the complaint in this lawsuit if such lawsuit related to his alleged ownership" of the disputed real property. Affirming Judge Cabrane's order in all respects, this Court warned that any violation of that injunction could be punished as contempt of court and imposed double court costs against Simmons. *Simmons v. Burns*, No. 88-6093 (2nd Cir. Oct. 5, 1988) (unpublished summary order).

App. A-26 to A-27.

In filing the motion subject to this Petition, the Petitioner clearly, intentionally and flagrantly violated the valid and outstanding Appellate Court injunction. The action taken by the Connecticut Supreme Court in dismissing the motion were the correct and decisive action, given the thirty-year history of this matter and the extraordinary judicial patience that has been displayed and exercises over the last eighteen years since the Connecticut Supreme Court rendered its decision in *Simmons v. Wetherall*, 180 Conn. 587 (1980).

CONCLUSION

Based upon the foregoing, it is clear that the petitioner has not established any basis upon which this Court, in its discretion, should grant review. Accordingly, it is respectfully urged that the petition be denied.

Respectfully submitted,

RICHARD BLUMENTHAL
ATTORNEY GENERAL
STATE OF CONNECTICUT

*Paul K. Pernerewski
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55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
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*Counsel of Record

No. 99-1318

In The

Supreme Court Of The United States

October Term, 1999

AUGUSTUS J. SIMMONS

Petitioner

v.

HORACE B. WETHERALL, ET AL.

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

APPENDIX

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No. 163875

AUGUSTUS J. SIMMONS : SUPERIOR COURT
of Windsor Locks

vs. : HARTFORD COUNTY

HORACE B. WETHERALL : January 4, 1978
of Wethersfield
Deputy Commissioner, Department of
Transportation of the State of Connecticut

Donald J. Lynch of New Britain
Director of Bureau of Aeronautics
Department of Transportation of the
State of Connecticut; and
State of Connecticut

Present Hon. Louis Shapiro, State Trial Referee.

This section by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the First Tuesday of February, 1970, and thence to December 13, 1977 when this action was consolidated with the following cases:

No. 202121	State of Connecticut vs. Augustus J. Simmons
No. 140965	State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;
No. 199230	Augustus J. Simmons vs. Samuel Kanell, et al; and
No. 162923	Augustus J. Simmons vs. Frank C. Parizek, et al;

and said cases were referred to the undersigned and thence to the present time, when the parties appeared and stipulated as follows:

1) That any Judgment of this Court is Case No. 202121, State of Connecticut vs. Augustus J. Simmons; Case No. 140965, State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons; Case No. 199230 Augustus J. Simmons vs. Samuel Kanell, et al; and Case No. 162923, Augustus J. Simmons vs. Frank C. Parizek, et al, be reopened and set aside.

2) That any temporary or permanent injunctive relief ordered by the Court in any of the said aforementioned matters be dissolved.

3) That on or about November 12, 1964, Augustus J. Simmons was the owner of three parcels of land located in the Town of Granby, County of Hartford, adjacent to Bradley International Airport know as Parcels A & C on a map entitled "Property of Anastasia Simmons, East Side - Rainbow Road, East Granby, Connecticut Scale: 1 in = 60 feet. Date October 1964, W.M. Alford Civil Engineer, Windsor, Connecticut A.J.S." which map is on file in the Town Clerk's office in said Town of East Granby together with a third piece of parcel of land known as Parcel D located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford, as described on a map entitled "Town of East Granby - Map showing property of Dept. of Transportation of the State of Connecticut - Rainbow Road - Route 20 Scale: 1 in = 40 feet. Date January, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on; file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Parcel D".

4) That on or about November 12, 1964, the State of Connecticut appropriated Parcels C and D and a portion of Parcel A and became the lawful owner thereof subject to just. compensation due Augustus J. Simmons. The description of said parcels and the portion of Parcel A retained by Augustus J. Simmons is set forth in a Stipulation for Judgment dated January 4, 1978.

5) That fair and just compensation due Augustus J. Simmons from the State for said parcels as of the date hereof, is $385,600 of which the sum of $95,600 is for counsel fees.

6) That all Claims in the above-mentioned cases and this action against individual defendants be denied.

7) That a Judgment entered in this matter be a full and final settlement between the parties of any and all claims and disputes concerning said parcels of land and any and all other claims contained in the above consolidated cases.

The Court, having heard the parties finds that on November 12, 1964, Augustus J. Simmons had the record title to said parcels of land, and the State entered thereon, appropriated the same to its own use,

WHEREUPON, it is ORDERED

1) That any Judgment of his court in Case No. 202121, State of Connecticut vs. Augustus J. Simmons; Case No. 140965, State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons; Case No. 199230 Augustus J. Simmons vs. Samuel Kanell,

et al; and Case No. 162923, Augustus J. Simmons vs. Frank C. Parizek, et al, be reopened and set aside;

2) That any temporary and/or permanent injunction ordered by the Court in any of the aforementioned consolidated matters be dissolved;

And it is Adjusted; that the State of Connecticut became the lawful owner of said parcels on November 12, 1964 subject to fair and just compensation due Augustus J. Simmons; that said Augustus J. Simmons recover from the State of Connecticut the sum of $385,600 as fair and just compensation for said parcels, without costs; that Judgment for the individual defendants in all of the consolidated cases be entered without costs; and that the files in the consolidated cases, be and are hereby sealed in their entirety and may not be reopened except an order of the undersigned of the Superior Court.

Execution on this judgment is stayed until April 21, 1978 after which time interest shall run at the statutory rate.

/s/ Louis Shapiro
Louis Shapiro
State Trial Referee

Approved
AUGUSTUS J. SIMMONS

By/s/
Rogin, Nassau, Lassman & Hirtle

State of Connecticut
CARL R. AJELLO
Attorney General

By/s/
Assistant Attorney General

Received June 2, 1978
at 1:48 A.M.

By/s/_____
/Asst. Town Clerk

NO. 16375

AUGUSTUS J. SIMMONS : SUPERIOR COURT

V. : HARTFORD COUNTY

HORACE B. WETHERELL ET AL : JUNE 2, 1978

Present: Hon. Louis Shaprio, State Trial Referee

SUPPLEMENTAL JUDGMENT

This action by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the first Tuesday of February, 1970, and thence to December 13, 1977, when this action was consolidated with the following cases:

No. 202121	State of Connecticut v. Augustus J. Simmons;
No. 140965	State of Connecticut v. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;
No. 1992230	Augustus J. Simmons v. Samuel Kannell, et al; and
No. 162923	Augustus J. Simmons v. Frank C. Patizek, et al;

and said cases were referred to the undersigned and thence to January 4, 1978, when the parties appeared and stipulated as to judgment as on file and thence to the present time when the parties appeared on the defendants' motion for execution on judgment.

The Court, having heard the parties, finds that Augustus J. Simmons has refused to perform according to a

stipulation for judgment and judgment dated January 4, 1978, and further finds that the defendants, Commissioner of Transportation and State of Connecticut, have offered and continue to offer to perform their obligation in accordance with said judgment.

The Court finds that taxes in the amount of $8,761.29, including interest, are due and owing to the Town of East Granby.

The Court, having heard evidence of an examination of the land records of the Town of East Granby, further finds that the following persons claim to have an interest in said premises by virtue of liens or encumbrances placed against said premises in accordance with the land records of said Town.

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
54/607	A	Jerome H. Diamond	Mtg.	7/9/73	$ 20,000
55/690	A	Jerome H Diamond	Mod. of Mtg.	6/20/74	-----
55/692	A	Jerome H. Diamond	Mtg.	6/27/74	$ 5,100
55/731	A.	Thomas P. Byrne	Mtg.	7/8/74	$ 4,000
57/62	ABC	Leonidas D. Simmons	L/P	3/3/76	Divorce
57/385	ABC	C.B.T.	Judg.	6/11/76	$ 962.97
57/426	ABC	Htfd Nat'l	Attach	6/21/76	$ 2,625
58/95	C	Leonard Allaire, et al	Judg.	3/15/77	$11,104
58/221	C	Patsy Valente, et al	Attach	4/28/77	$ 3,000
58/301	A	Angelo Roncari	Lsc.	5/24/77	-----

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
59/253	C	Patsy Valente, et al	J/L	3/7/78	$ 2,490
59/263	C	Patsy Valente, et al	L/P	3/13/78	$ 3,000
59/266	C	Leonard Allaire, et al	L/P	3/13/78	$13,000
59/233	Portion of Parcel A	Westside Vallet Parking, Inc.	Lsc.	3/16/78	
59/419	AC	David B. Salzman, et al	Attach.	4/20/78	$105,000

WHEREUPON, IT IS ORDERED

1) That all encumbrances be removed and that title to the premises described in Exhibit A, attached hereto, together with covenants described in Exhibit B, attached hereto, against the land described in said Exhibit D is an are vested in the State of Connecticut in accordance with the judgment entered herein.

2) That the State of Connecticut pay to the Clerk of the Superior Court for Hartford County the sum of $385,600 in accordance with the provisions of said judgment.

3) That the Clerk of said Court pay to the tax collector together with accrued interest, lien, and release fees for the Town of East Granby the sum of $8,761.29 from the sum deposited.

4) That pursuant o Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrancers and lienors described herein be and are cited to appear before the Court with

proof of the amount and validity of their liens or encumbrances, that the Clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

/s/Louis Shapiro
Louis Shapiro
State Trial Referee

EXHIBIT A

PARCEL I

A certain piece or parcel of land, containing 5.97 acres situated in the said Town of East Granby on the northeasterly side of Route #20, also known as Rainbow Road, and also known as Parcel C on a map entitled: "Property of Anastasia Simmons east side - Rainbow Road, East Granby, Conn. W.M. Alford Civil Engineer Windsor Conn. Scale 1 inch = 60 ft. October 1964", which map is on file in the Town Clerk's Office in said Town of East Granby and being more particularly bounded and described as follows:

Beginning at a point in the northeasterly side of Route #20 in the Town of East Granby which point is Six Hundred Ninety-Three (693) feet southeasterly from the southeasterly corner of land now or formerly of Charles Comer, as measured along the northeasterly line of Route #20;

Thence N 20o 27' 30" E along land now or formerly of Charles A. Simmons, Eight Hundred Sixty and Forth-Six One-Hundredths (860.46) feet to a point;

Thence S 29o 08' 50" E along land now or formerly of the State of Connecticut, One Hundred Sixty-Three and Seventy One-Hundredths (163.70) feet to a point;

Thence S 22o 23' 40" W along land now or formerly of the State of Connecticut, Eighty-One and Twenty-Seven One-Hundredths (81.24) feet to a point;

Thence S 09o 18' 30" W along land now or formerly of the State of Connecticut, Fifty-Nine and Forty-Seven One-Hundredths (59.74) feet to a point;

Thence S 02° 13' 40" E along land now or formerly of the State of Connecticut, Ninety-One and Fifty-Five One-Hundredths (91.55) feet to a point;

Thence S 05° 06' 30" W along land now or formerly of the State of Connecticut, One Hundred Three and Seventy-Nine One-Hundredths (103.79) feet to a point;

Thence S 09° 29' 00" E along land now or formerly of the State of Connecticut, Seventy-Three and One One-Hundredths (73.01) feet to a point;

Thence S 03° 59' 20" W along land now or formerly of the State of Connecticut, One Hundred Seventeen and Four One-Hundredths (117.04) feet to a point;

Thence S 16° 13' 10" W along land now or formerly of the State of Connecticut One Hundred Forty-Eight and Forty-Four One-Hundredths (148.44) feet to a point;

Thence S 20° 3' 00" W along land now or formerly of the State of Connecticut, Two Hundred Seventy-Four and Forty-Six One-Hundredths (274.46) feet to a point in the northerly line of Route #20;

Thence along a curve whose radius is 1834.86, a distance of Four Hundred Fifty and Ninety One-Hundredths (450.90) feet to the point or place of beginning.

PARCEL II

Said parcel as hereinafter described is shown on a map entitled: "Town of East Granby Map showing Property of Department of Transportation Rainbow Road - Route #20 Scale 1"=40' Karl F. Crawford Transportation Chief Engineer - Bureau of Highways January, 1978", which map is on file in the East Granby Town Clerk's Office.

A certain piece or parcel of land located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford and State of Connecticut, containing 1.12 acres, more or less, bounded and described as follows:

Beginning at the intersection of a former town road, a/k/a Bush Road and Old Route #20 approximately 348 feet from the East Granby-Windsor town line as measured along the northerly line of Old Route #20;

Thence proceeding westerly along highway line known as Old Route #20 as shown on said map, a distance of 522 feet, more or less;

Thence in a northwesterly direction a distance of 66 feet more or less to other land of Simmons;

Thence in an easterly direction a distance of 420 feet, more or less to the center of a former town road, a/k/a Bush Road;

Thence southeasterly along the center line of a former town road, a/k/a Bush Road, a distance of 230 Feet, more or less to the point of beginning.

PARCEL III

A certain piece or parcel of land situated in the Town of East Granby, County of Hartford and State of Connecticut, consisting of 2.2 acres, more or less, as shown on a certain map entitled: "Town of East Granby Map showing Property of Dept. of Transportation of The State of Connecticut Rainbow Road - Route 20 Scale 1"=40' January 1978 Karl F. Crawford Transportation Chief Engineer - Bureau of Highways Revised 2-24-73 Town No. 39-Misc. Project No. 5001 Serial No. 17 & 17A Sheet 2 of 2", which map is on file in the Town Clerk's Office in said Town of East Granby, and being more particularly bounded and described as follows:

NORTHERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, One Hundred Seventy-Four (174) feet, more or less;

EASTERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, Four Hundred Twenty-Five (425) feet, more or less;

SOUTHERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Thirty-Eight (338) feet, more or less; and

WESTERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Seventy-Eight (378) feet, more or less.

EXHIBIT B

A certain piece or parcel of land bounded and described on a map entitled "Town of East Granby - Map showing property of Augustus J. Simmons - Rainbow Road - Route 20 - Scale: 1 in. = 40 feet. Dated February 2, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Retained Premises".

Augustus J. Simmons convenants with the State of Connecticut that, with regard to the "Retained Premises", the following covenants and restrictions shall run with the land and shall be effective so long as Bradley International Airport or its successor in title or name, continues to operate as a State or Federal Airport:

A. Height Restriction

No building, tree, tower, antenna, smokestack or flagpole, or any other structure or growth, natural or manmade, shall be allowed above the maximum elevation of 215.5 feet above sea level.

B. Lighting

No exterior lighting will be constructed or installed unless said lighting conforms to Federal standards in force at all times. Said standards are presently set forth in 14 Code of Federal Regulations Sections 77, et seq. Notice of any proposed construction shall be given to the Commissioner of Transportation at the same time it is given to the Federal Aviation Administration. In the event that prior approval from the Federal Aviation Administration, for this construction is required by 14 C.F.R. Sections 77, et seq. copies of said request and approval shall be sent to the Commissioner of the Department of Transportation for the State of Connecticut.

C. Rights of First Refusal

The State of Connecticut shall have the right of first refusal in the event Grantor shall desire to sell the "Retained Premises". Such first refusal, however, shall be subject to the following conditions:

a) Grantor shall give to State of Connecticut written notice which notice shall state the terms and conditions of a bona fide written offer to the Grantor from a third party.

b) State of Connecticut shall have the right to purchase said "Retained Premises" by notifying the Grantor in writing within 90 days of receipt by State of such written offer. Such purchase by State shall be on the same terms and conditions as the offer received by Grantor from such third party.

c) In the event that State shall exercise its right to purchase in accordance with this paragraph, notice of its intent to exercise as provided in paragraph (b) shall be accompanied by a certified check to the order of Augustus J. Simmons heirs or assigns in the amount of 10% of the purchase price which shall be a deposit toward the purchase price of said "Retained Premises".

d) The transfer of title in accordance with the terms of such offer shall take place on or before thirty (30) days after receipt by Grantor of notice of State's intent to exercise its right of first refusal.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever, agree that the Premises owned by the State of Connecticut shall be used for aeronautic purposes, including the operation of all types of aircraft, both conventional propeller driven and jet powered, as well as any other type of aircraft not heretofore operated from the airport, including but not limited to helicopters, and I further

covenant and agree for myself, my heirs, administrators, and assigns that neither I nor any successor in interest of mine, will have any cause, claim or right of action against the State of Connecticut, or any of its successors in interest, as a result of aeronautics operations on, over or through the Premises owned by the State of Connecticut as the result of noise resulting from said aircraft operations as it may affect the Retained Premises. This covenant and agreement shall also run with the land and shall be construed as a real covenant running with the land unless and until such time as, by agreement with the State of Connecticut, its successors assigns, this covenant is terminated.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever and my successors in interest specifically waive and relinquish any rights in law or equity relative to said noise from aeronautics operations relating to the Retained Premises.

CASES INITIATED BY AUGUSTUS J. SIMMONS POST 1978 JUDGMENT AND SUPPLEMENTAL JUDGMENT AFFIRMED IN SIMMONS V. WETHERALL 180 CONN. 587 430 A.2d 1296 (1980)

I. **STATE COURT PROCEEDINGS:**

Superior Court	Appellate Court	Supreme Court	United States Supreme Court
1. Simmons v. Wetherall CV-70-163875, et al. Motion for Declaratory Relief Feb. 1984 dismissed Edelberg, J.	3 Conn. App. 672(1985) Affirmed	---	----
2. Simmons v. Burns CV-86-312557 Jan. 1986 dismissed Stoughton, J.	9 Conn. App. 802(1986) Affirmed	201 Conn.815(1986) Pet.Cert.denied	---
3.Simmons v. Burns, et al. CV-87-0334855 Aug. 1987 Dismissed, Norko, J. (removed to U.S. District Court--See H-87-732(JAC)below)	---	---	---

Superior Court	Appellate Court	Supreme Court	United States Supreme Court
4. Simmons v. State of Conn., et al. CV-89-700313 July, 1989 dismissed	24 Conn.App. 801(1991) Affirmed	218 Conn. 901(1991) Pet. Cert. denied	90-1807 Cert. denied Oct.7, 1991
5. Simmons v. State of Conn. CV-90-701038 May 1990 dismissed P.B.Sec. 111 sanctions N. O'Neill, J.	---	---	---
6. Simmons v. Wetherall CV-70-163875, et al. Motion of Referral to Referee	A.C. 10918 Orders (unreported) 1.Appeal Dismissed 2.Sanctions Imposed (injunction) April 3, 1992	222 Conn. 906(1992) Pet.Cert. Denied	---
7. Simmons v. Frankel CV-92-05053988S December 1991 Dismissed Sanctions imposed (injunction) May 1992, Satter, J.	---	---	---

Superior Court	Appellate Court	Supreme Court	United States Supreme Court
8. Simmons v. Wetherall CV-70-163875, et al. Motion for Impeachment December, 1995 denied Sheldon, J.	A.C. 15481 Order dismissed (sua sponte) March 20, 1996	Cert. Denied May, 1996 pending	

9. Simmons v. Wetherall
CV-70-163875
Plaintiff's Request for Hearings
On Various Motions - Jan. 3, 1997
Denied, Jan. 31, 1997, Langenbach, J.

10. State of Connecticut v. August J. Simmons
CR97-106221, CR97-0104930, CR97-0105048
Motion to Disqualify Dismiss, "Pack the Bags"
Of the State Attorney's Office - May 8, 1998
Denied

11.Simmons v. Wetherall
CV-70-163875
Plaintiff's Motion to Dismiss-July 8, 1998
Denied

12. Simmons v. Wetherall CV-70-163875	---	HHD-CV-70-163875 Order Dismissed Sept. 15, 1998	Pet. Cert. Pending Dec., 1998

II. **FEDERAL COURT PROCEEDINGS:**

United States District Court District of Connecticut	United States Court of Appeals for the Second Circuit	United States Supreme Court
1.Simmons v. Powers		
H-81-778 (JAC))		
1981)		
)		
2.Simmons v. United States of America, et al.		
H-83-225 (TEC))		
1983)		
Consolidated -dismissed Aug. 16, 1983	83-6257(1983) Affirmed	83-1833 Cert. denied
3.Simmons v. United States of America, et al.		
H-85-45 (MJB) 1985 Dismissed	8506087 (1985) Affirmed notice of future sanctions	---
4.Simmons v. Burns, et al.		
H-87-732 (JAC) 1987 Dismissed plaintiff enjoined from further federal district court actions	88-6093(1988) Affirmed Sanctions imposed	88-693 Cert. denied Nov. 28, 1988

United States District Court District of Connecticut	United States Court of Appeals for the Second Circuit	United States Supreme Court
5.Simmons v. Frankel, et al.		
292 CV 00395(PCD) June 1992 Dismissed Sanctions imposed - $2,000	92-6208(1993) Affirmed Sanctions imposed	92-1762 Cert. denied Oct. 4, 1993
6.Simmons v. Hinson, et al.		
394 CV 00778(AHN) May 1994 Dismissed with prejudice	94-6156(1994) Affirmed Sanctions imposed -$5,000	94-1651 Cert. denied June 5, 1995
7.Simmons v. Burns		
395 CV 02198(RNC) October 1995 Dismissed	96-7336 (1996) Appeal dismissed, (sua sponte)	

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-91-0549

Augustus J. Simmons

v.

Horace Wetherell

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court, it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/Alan M. Gannuscio
ASSISTANT
CLERK-APPELLATE

Dated: May 21, 1992

Notice to: 5/21/92
Clerk, Superior Court, Hartford - 163875
Clerk, Appellate Court
Lasky & Witt
Augustus J. Simmons, pro se
Arnold K. Shimelman, Assistant Attorney General

Otto P. Witt in support of petition; Arnold K. Shimelman, Assistant Attorney General, in opposition.